

## **§ 78A-2. Definitions.**

When used in this Chapter, unless the context otherwise requires:

- (1) "Administrator" means the Secretary of State.
- (2) "Dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Dealer" does not include:
  - a. A salesman,
  - b. A bank, savings institution, or trust company,
  - c. A person who has no place of business in this State if
    1. He effects transactions in this State exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or
    2. In the case of a person registered as a dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 and in one or more states, during any period of 12 consecutive months he does not effect more than 15 purchases or sales in this State in any manner with persons other than those specified in clause 1, whether or not the dealer or any of the purchasers or sellers is then present in this State, or
  - d. An issuer if
    1. The security is exempted under subdivisions (1), (2), (3), (4), (5), (7), (9), (10), (11), (13), or (14) of G.S. 78A-16, or the security is a security covered under federal law, or the transaction is exempted under G.S. 78A-17, except for G.S. 78A-17(19) if the security is a viatical settlement contract, or the transaction is in a security covered under federal law, and such exemption has not been denied or revoked under G.S. 78A-18, or
    2. The security is registered under this Chapter and it is offered and sold through a registered dealer, or
    3. All of the following conditions are met: (i) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective purchaser in this State; (ii) the total amount of the offering, both within and without this State, does not exceed two million five hundred thousand dollars (\$2,500,000); and (iii) the total number of purchasers, both within and without this State, does not exceed 100. Provided, however, the Administrator may by rule or order waive the condition imposed by subdivision (iii) hereof; or
    4. The security is issued by an open-end management company that is registered under the Investment Company Act of 1940 and so long as no sales load is paid or given, directly or indirectly.

- e. A person who acts as a business broker with respect to a transaction involving the offer or sale of all of the stock or other equity interests in any closely held corporation provided that such stock or other equity interest is sold to no more than one person, as that term is defined herein.
  - f. An individual who represents an issuer in effecting transactions in a security described in sub-subdivision (2)d. of this section or a security covered under federal law, provided no commission or other special remuneration is paid or given directly or indirectly for soliciting any prospective purchaser in this State.
- (2a) "Entity" includes a corporation, joint-stock company, limited liability company, business trust, limited partnership or other partnership in which the interests of the partners are evidenced by a security, trust in which the interests of the beneficiaries are evidenced by a security, any other unincorporated organization in which two or more persons have a joint or common economic interest evidenced by a security, and government or political subdivision of a government.
- (3) "Fraud," "deceit," and "defraud" are not limited to common-law deceit.
- (4) "Guaranteed" means guaranteed as to payment of principal, interest, dividends, or other distributions.
- (5) "Issuer" means any person who issues or proposes to issue any security, except that
- a. With respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted-management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and
  - b. With respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payments out of production under such titles or leases, there is not considered to be any "issuer."
  - c. With respect to a viatical settlement contract, "issuer" means a person involved in creating, offering, transferring, or selling to an investor any interest in a viatical settlement contract, including, but not limited to, fractional or pooled interests.
- (6) "Nonissuer" means not directly or indirectly for the benefit of the issuer.
- (7) "Person" means an individual, an entity, a partnership in which the interests of the partners are not evidenced by a security, a trust in which the interests of the beneficiaries are not evidenced by a security, or an unincorporated organization.
- (8) a. "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.
- b. "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.
- c. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to

- constitute part of the subject of the purchase and to have been offered and sold for value.
- d. A purported gift of assessable stock or other ownership interest obligating the owner to make future payments is considered to involve an offer and sale.
  - e. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.
  - f. The terms defined in this subdivision and the term "purchase" as used in this Chapter do not include any of the following:
    - 1. Any bona fide loan, pledge, or other transaction creating a bona fide security interest.
    - 2. Any stock split and any security dividend or distribution, whether the entity distributing the dividend or distribution is the issuer of the security or not, if nothing of value is given by security holders for the dividend or distribution other than the surrender of a right to a cash or property dividend or distribution when each security holder may elect to take the dividend or distribution in cash or property or in securities.
    - 3., 4. Repealed by Session Laws 2001-201, s. 6, effective October 1, 2001.
- (9) "Salesman" means any individual other than a dealer who represents a dealer in effecting or attempting to effect purchases or sales of securities. "Salesman" does not include an individual who represents a dealer in effecting transactions in this State limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(h)(2)). A partner, executive officer, or director of a dealer, or a person occupying a similar status or performing similar functions, is a salesman only if that person otherwise comes within this definition.
- (10) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," "Investment Company Act of 1940," and "Internal Revenue Code" mean the federal statutes of those names as amended before or after April 1, 1975.
- (11) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract including without limitation any investment contract taking the form of a whiskey warehouse receipt or other investment of money in whiskey or malt beverages; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; viatical settlement contract or any fractional or pooled interest in a viatical settlement contract; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment

policy, funding agreement, as defined in G.S. 58-7-16, or annuity contract under which an insurance company promises to pay (i) a fixed sum of money either in a lump sum or periodically for life or for some other specified period, or (ii) benefits or payments or value that vary so as to reflect investment results of any segregated portfolio of investments or of a designated separate account or accounts in which amounts received or retained in connection with a contract have been placed if the delivering or issuing insurance company has currently satisfied the Commissioner of Insurance that it is in compliance with G.S. 58-7-95.

- (11a) "Security covered under federal law" means any security that is a covered security under section 18(b) of the Securities Act of 1933 (15 U.S.C. § 77r(b)) or rules or regulations adopted under that section.
- (12) "State" means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.
- (13) "Viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, or devise of all or any portion of the death benefit or ownership of a life insurance policy or contract for consideration which is less than the expected death benefit of the life insurance policy or contract. "Viatical settlement contract" does not include:
  - a. The assignment, transfer, sale, or devise of a death benefit of a life insurance policy or contract made by the viator to an insurance company or to a viatical settlement provider or broker licensed pursuant to the Viatical Settlements Act (Part 5 of Article 58 of Chapter 58 of the General Statutes);
  - b. The assignment of a life insurance policy or contract to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or
  - c. The exercise of accelerated benefits pursuant to the terms of a life insurance policy or contract and consistent with applicable law. (1925, c. 190, s. 2; 1927, c. 149, s. 2; 1933, c. 432; 1943, c. 104, ss. 2, 3; 1955, c. 436, s. 1; 1973, c. 1380; 1983, c. 817, ss. 1-3; 1987, c. 849, s. 1; 1989, c. 12, s. 1; 1993 (Reg. Sess., 1994), c. 600, s. 3; 1995, c. 509, s. 35; 1997-419, ss. 1-4; 2001-201, ss. 2, 3, 4, 5, 6; 2001-436, s. 6; 2011-284, s. 61.)